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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/995,899	11/28/2001	Robert J. Macdonald	34200	1559
116	7590	03/07/2006	EXAMINER	
PEARNE & GORDON LLP 1801 EAST 9TH STREET SUITE 1200 CLEVELAND, OH 44114-3108			CONLEY, FREDRICK C	
			ART UNIT	PAPER NUMBER
			3673	

DATE MAILED: 03/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/995,899

Applicant(s)

MACDONALD, ROBERT J.

Examiner

FREDRICK C. CONLEY

Art Unit

3673

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 December 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 6-8, 10, 12-15, 21 and 22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 6-8, 10, 12-15, 21 and 22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 6-8, 10, 12-15, and 21-22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

With regards to claims 6, 10, 14, and 22, it is unclear what is meant by the Applicant's recitation "side edges that are not finished" especially since the Applicant recites that the side edges are joined to each other by seams over their edges.

Claims 7-8, 12-13, 15, and 22 are rejected due to dependence on a rejected base claim.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 6-8, 10, and 12-13 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Pat. No. 3,789,441 to Weiss.

Claims 6 and 21-22, Weiss discloses a fitted sheet for a mattress comprising a rectangular panel of knit material having a central rectangular area 12 extending from one end of said panel to the other end thereof, and side margins (14-17) flanking said central area, said side margins being folded under said central area and joined thereto by seams along the lower edges 24 that extend transversely across each end of said central rectangular area,

wherein said rectangular panel of knit material has side edges that are not finished, and at the end of said sheet, said seams are sewn directly over the ends of said unfinished edges, and wherein said unfinished edge is rolled into a curled edge prior to being sewn flat (col. 4 lines 27-31).

Claim 7, further characterized in that said rectangular panel of knit material is fabricated from a tube of knit material that has been slit and opened to form a rectangle with cut edges (col. 3 lines 3-16).

Claim 8, further characterized in that said cut edge, in a finished sheet, is curled under into itself (col. 4 lines 27-31).

Claim 10, Weiss discloses a method of making a fitted sheet, comprising the steps of:

- i) cutting a predetermined length of a tube of knit fabric,
- ii) slitting said length of fabric along its length in a straight line from end to end (col. 3 lines 3-16);
- iii) arranging said fabric so that the slit edges of said fabric are folded over onto the main body of said fabric; and
- iv) sewing a seam 18 across each end of the fabric, thereby to join the folded-over edges of the fabric to the main body thereof in a folded over state, wherein said slit edges are sewn to said main body in an unfinished state, wherein said slit edges are curled inwardly before being seamed to said main body of said fabric (col. 4 lines 27-31).

Claim 12, wherein said slit edges are curled inwardly before being seamed to said main body of said fabric (col. 4 lines 27-31).

Claim 13, wherein said seams are generally convexly arcuate (col. 4 lines 15-17).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 14-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 3,789,441 to Weiss in view of U.S. Pat. No. 4,912,790 to Macdonald.

Claim 14, Weiss discloses a method of making a fitted sheet comprising the steps of:

- i) cutting a predetermined length of a tube of knit fabric;
- ii) slitting said tube of fabric along an edge thereof, from end to end (col. 3 lines 3-16);
- iii) cutting a shallow corner (20,22) from each end of said tube of fabric, at the slit side thereof, from first points on the cut edge near the end, to second points on the end, near the folded-over mid-line of the slit tube of fabric;
- iv) opening the fabric, and folding the side margins thereof inwardly so that at each corner thereof, the said first points are said on top of the said second points; and
- v) sewing a seam 18 across the top and bottom ends of the fabric, to join the folded-over margins to the main body of the sheet. Weiss fails to disclose the cutting of the corner in a generally straight line. Macdonald discloses a corner for a fitted sheet comprising a corner cut to a generally straight line (fig. 3). It would have been obvious for one having ordinary skill in the art at the time of the invention to cut the corner in a

generally straight line as taught by Macdonald (col. 3 lines 6-9) in order to provide an alternative pattern for making a fitted sheet.

Claim 15, wherein said seam is sewn, the cut edge of said fabric is curled in, and sewn flat in the curled-in condition (col. 4 lines 27-31).

Response to Arguments

Applicant's arguments filed 12/19/05 have been fully considered but they are not persuasive.

Contrary to the Applicant's arguments, the side panels of Weiss are clearly joined to each other by a seam that is stitched along the lower edges 24 of the side panels (col. 4 lines 27-30). Furthermore, it appears that the side edges are unfinished to the same degree of the Applicant's invention. The determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." In re Thorpe, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985).

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to FREDRICK C. CONLEY whose telephone number is 571-272-7040. The examiner can normally be reached on M-TH.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, PATRICIA L. ENGLE can be reached on 571-272-6660. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

FC



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